11-1-1971

The Advocate, November 1, 1971

Government Joins War on Pollution

by Ron Tipton

In the past two years the environmental movement has developed from a populist quest for a better life to an explicit responsibility thrust upon the Federal government by the citizenry. This Federal effort is presently centered in the Environmental Protection Agency (EPA). Recognizing that all forms of environmental degradation are interrelated, Congress, on December 2, 1970, consolidated the programs of various Federal agencies by creating a single agency to handle environmental problems.

EPA, as a result of this action, was given statutory authority in five major areas of pollution abatement. Air pollution control and solid waste management were transferred from the Department of Health, Education and Welfare. From the Department of the Interior came the functions of the Federal Water Pollution Control Administration, as well as pesticides regulation. Finally, EPA was vested with control of environmental radiation, previously a function of the Atomic Energy Commission and the Federal Radiation Council.

This massive and abrupt reorganization presented certain inherent problems. EPA, while theoretically considered a single superstructure for dealing with a multitude of environmental activities, has in fact been plagued with an inability to achieve the requisite functional consolidation. Within the agency many of its employees still perceive themselves as part of an office and program separate and distinct from the rest of the Agency.

A more obvious obstacle to coordinated pollution abatement is the problem of logistics. Until very recently EPA's offices were located in at least six separate buildings throughout downtown Washington and extending as far into the suburbs as Rockville, Maryland. Simply locating a particular program or office was in itself an unenviable task. Questions concerning the organizational and administrative structure of EPA were difficult for the Agency's own personnel to answer. A phone call to the agency concerning the Office of Water Quality was likely to be answered "We don't have such an office."

In spite of these difficulties, EPA has made significant progress towards internal organization under its Administrator, William Ruckelshaus, who is considered by most within and outside the government to be one of the Nixon administration's most competent people. Assistant administrators have line responsibility for the major offices of Planning and Management, Research and Monitoring, and Enforcement. A fourth official, the Assistant Administrator for Media Programs, supervises the air and water programs, while a fifth Assistant Administrator for Categorical Programs implements the solid waste, pesticide and radiation control programs.

(See EPA, p. 7)

The Advocate

Volume 3 Number 3 — Student Newspaper of the National Law Center, The George Washington University — November 1, 1971

Edgar Smith: Before entering prison (left)....and now.

Smith Given Review By Supreme Court

by Harold C. Gordon

Less than two weeks ago, the Supreme Court of the United States set the stage for what will be the last act of one of the most gripping dramas of life and death in the history of American justice: the case of Edgar Smith. On October 12, a unanimous court, over the protests of the State of New Jersey, upheld without comment the decisions of the U.S. District Court and Circuit Court of Appeals ordering the State to grant Smith a new trial within sixty days or free him. For Edgar Smith, who has spent the past fourteen years on death row, that decision was a long time in coming.

Convicted in 1957 of the brutal murder of a teenage girl, Smith, then a 23-year-old high school dropout, has since fought a dramatic duel with the electric chair, slashing away at every aspect of his arrest and conviction: at the confession which was extorted from him after hours of intensive interrogation in which even then he protested his innocence; at the holes in the prosecution's shaky theory of the crime; at the atmosphere of sensationalism and hysteria in which he was tried. And he has proved to be no mean antagonist; as a result of the brilliant legal briefs which he himself has written, the two books which he has produced, and the support he has won from such notables as William F. Buckley and others, the "reasonable doubt" as to his guilt has reached the point where he has not only been granted a new trial but the prosecution has been denied the use of the confession which it forced from him after his arrest.

Of course it has not been easy for him. Most states do little enough to aid in the

(See SMITH, p. 8)

SFC Votes To Remove Credit Bar

The Student-Faculty Committee of the National Law Center, consisting of eight second and third year students and four faculty members, passed two resolutions at its October 25 meeting. The first denies any faculty member from receiving notice of which students are taking his course under the "pass-fail" option and the second resolution allows full-time students to take credits beyond the present 15 maximum per semester, during their sixth semester, if such credits are needed to graduate

(See SFC, p. 7)

Clinical Law Professor Plans New Programs

by Cliff Fridkis

A new clinical law program emphasizing legal and quasi-legal assistance to minority groups within the District of Columbia will open this Spring under the direction of Willie Leftwich, Visiting Professor of Clinical Legal Studies.

The Community Legal Clinic was developed through the efforts of several GW law professors who sought a substitute for the Urban Law Institute. It is presently funded through the school by the Department of Health, Education and Welfare.

One of the most challenging programs, CREATE, will place approximately thirty "ex-inmates", as the former prisioners call themselves, into a dry cleaning and laundry business. This is a "halfway-house" concept developed by the ex-inmates. "A convict's biggest problem is getting a job", explains Letfwich, "so these guys created their own." Law students will provide legal advice to the ex-inmates business.

"It's a real challenge," says Leftwich. "The last time these guys had a free lawyer," he continued, "they got five years." Letfwich believes that ex-convicts are extremely reluctant to open up to students. However, he hopes that diligent students will be able to gain the confidence of the ex-inmates and will thus greatly benefit from the experience.

The Allied Industries Project is another CLC program in which small businesses will form a cooperative under one roof, sharing overhead. Leftwich explained, "These people heard about us in the neighborhood and thought we could help them develop a charter, as well as contract advice and make suggestions during their monthly meetings." He also emphasized that they need general counselors and some of the students' advice should be of a non-legal nature.

"Before taking on a project", Leftwich added, "I ask: can the students learn something and can we so some good?"

All the projects will not be directly community oriented. The planned "how-to-books" program will involve research and writing. A group of approximately five students will be given a lecture by an expert in a specific field and will then draft a booklet explaining the step by step procedure involved. The food stamp program was an example given by Leftwich. The focus will be on detail and simplicity, "down to which elevator button to press."

A D.C. Human Relations Commission is now in the planning stages. It will include student representation of complaintants at fact finding hearings and the investigation of Metro's contracting procedure.

Students will be allowed to sign up for the Community Legal Clinic for the Spring semester. However, those who are interested in getting involved immediately, or those having suggestions for additional programs may contact Professor Letfwich in Bacon Hall, room 307.

"My people are not there to run errands. We don't do busy work."

"I have as many projects as there are interested students."

"A black, legal activist, Republican professor."

Willie Lefwich, visiting Clinical Law Professor, explains CLC concept.

Dean Nash Supports GW As Clinical Law Innovator

by Marlene Merritt

"If clinical is the way law schools are going to change, then we should expand the concept of clinical education," asserted Professor Ralph Nash, Associate Dean of the George Washington National Law Center.

In an interview designed to give the Administration "rebuttal time" to the *Advocate* article of October 11 highly critical of the Administration's efforts in clinical education, Dean Nash corrected what he donsiders inaccuracies in the article, revealed the reasons for the delay in starting the Community Legal Clinic, and stressed the need to reassess our definition of clinical law.

Contrary to the *Advocate's* reportage, the Law Center does have a full-time clinical law professor, law school funds are used to support to support clinical programs, and concerted efforts of deans and faculty have been responsible for obtaining outside grants for programs.

In July the National Law Center hired Professor Willie Leftwich to run the Community Legal Clinic which will involve numerous projects. The program is funded with Mellon Foundation money given to the University for experiments to involve it in the community.

External political wranglings frustrated the progress of a major CLC program devoted to developing a section of South East Anacostia. Initially, government money and 50% of the Community Legal Clinic resources were earmarked for the program. However, in early September, a leadership fight erupted in the local citizen action group of Anacostia, known as Chase, resulting in a court-administered election. In reaction, United Planning Organization, a group which allocates OEO grants for projects, cut off the government money to Chase.

While a few CLC projects in the community have begun, the turn-about in funding an organizational problem at the law school.

Leftwich and a faculty committee, chaired by Professor Roger Kuhn, met and approved 4 or 5 projects which have recently begun. "If it grows as it should, it could easily involve perhaps 50 or more students a semester," said Nash. "The problem is, it's late in the semester and probably not more than 12 students will participate this semester." Presently the Mellon funds are paying four students for their work on projects.

The projects tend to be difficult, and require the knowledge of at least a second-year student. One project involves the recodification of all anti-discrimination provisions in the D.C. Code to make discrimination cases easier to argue. Two others deal with minority business development.

Nash pointed out the CLC will not be a mirror image of Legal Aid. "The emphasis should be on group representation rather than on individual representation. Our fundamental philosophy – like that of the Urban Law Institute – is to help the community change."

Nash stressed the need to proceed with caution in planning the projects. "We are dealing with a black community somewhat turned off about white liberals. We have to be careful of the attitudes they form towards us. . .Service is not so easy – legal advice alone will not overcome the money problems of minority businessmen."

Another difficulty in planning is working out something truly of service to people and also educationally sound. There is the problem of the student's academic load conflicting with the demands of clinical work. "The balance gives us fits," said Nash.

A third reason for caution is financial. The Mellon grant, under the discretion of Professor Clarence mondale of the Humanities Department, is not guaranteed to the CLC beyond this year.

"It is more important to get started right," said Nash. "If we can find a way to finance it, the Community Law Clinic will be around a long time."

Nash expressed high confidence in Leftwich's ability to handle the program successfully – in understanding student's problems, in relating to the black community, and in dealing with government bureaucrats whose cooperation is necessary for many projects. Leftwich graduated from the evening division of the National Law Center in 1967, and has pursued graduate study in psychology, technology and law. He has worked for the government and was counsel for several black organizations and businesses.

Dean Nash then turned more generally to the nature of clinical education. "Nobody has the same conception of clinical law. We see a huge amount of experimentation in the law school world with much confusion." Nash is bothered by the narrowness of the definition of clinical law with its heavy emphasis on service. "It would be a travesty to have many clinical programs and no service to the community. But everything doesn't have to be of service. Some experiences should be solely geared to educating the students."

"We have an idea that to be bona fide, clinical has to be totally outside the classroom building. Maybe we should have every class require clinical experience – but that experience can include empirical research in the field, which is non-service but has a lot to do with the practice of law. Or clinical could include work on hypothetical problems in a legal area, very relevant to what is going on in the real world."

Nash concluded with the observation that "Our key problem is to find a way to make the second and third years stimulating and enjoyable. Although the curriculum is varied now, we must make it better – and one way is to get away from a purely theoretical approach in these years." Nash asserted we ought to make room for all methods of clinical law. "If clinical is the way law schools are going to change, expand the concept."

Clinical programs receiving law school funds, according to Nash, include Banzhaf's Unfair Trade Practices Class, Rothschild's Consumer program and 399- a 10-hour program available to any student whereby he arranges with a professor to do a project of his choice. Nash considers the perfect educational-service model "Creating a one-to-one relationship between student and professor working toward a solution on a real legal problem.."

DNC Chairman Lawrence F. O'Brien frankly admits that the purpose of the suit is to "reduce the impact of presidential prestige on the discussion of public issues."

'Cop' Rizzo Faces 'Limousine Liberal'

by Harold Rosenthal

Tomorrow's Philadelphia mayoralty election will have an impact on American politics beyond the city's borders. This election, which pits a staunch advocate of "law and order" against a liberal Republican, is certain to affect the national political scene for 1972.

The Democratic candidate is Frank Rizzo, who resigned as the city's controversial police commissioner in order to run for mayor. He is a career police officer who has never held a non-police job in his adult life. If elected, he would be the first Italo-American mayor ever elected in Philadelphia, which has long had a large Italian population.

Not surprisingly, Rizzo's greatest support has come from the Italo-American community. He is also popular with crime-fearing, middle-class Philadelphians, who view him as their protector, and with lower-class whites, whose support for Rizzo is more commonly based on racial fears.

The Republican candidate is W. Thacher Longstreth, a wealthy and aristocratic WASP who epitomizes the class Mario Procaccino once described as "limousine liberals." He is an Ivy Leaguer and a former Chamber of Commerce executive who has long been active in civic affairs. He first ran for mayor in 1955, and more recently has served a term in the City Council.

Longstreth's greatest appeal is to young and black voters, who feel most threatened by Rizzo. Civil libertarians, alarmed by what they consider Rizzo's greater concern for order rather than justice, also are behind Longstreth., as are many supporters of Rizzo's primary opponents.

Rizzo's greatest issue, obviously, is law and order. During his tenure as commissioner, Philadelphia boasted of being the safest of America's ten largest cities, and Rizzo is given much of the credit for that.

Longstreth has concentrated his efforts on linking Rizzo to the unpopular administration of retiring Mayor James Tate, but with doubtful success. Rizzo's lack of non-police experience has similarly not appeared to be important to the voters. The emotional reaction to his image as police commissioner will probably sway more votes, either way, than anything else.

Longstreth must convince large numbers of black voters to shift from their traditional Democratic allegiance if he is to win. At the same time, however, his blatant appeals for black votes on a racial basis run the risk of alienating white voters. The racial issue is certain to be more important than ever in this election, as charges and counter-charges of racism fly daily.

The national impact of tomorrow's election results may be felt in many ways. Certainly the election will be an indication of the continuing viability of law and order as a political issue. A Rizzo victory would demonstrate, perhaps more clearly than any other election could, that fear of crime can alone catapult a candidate into office.

This election may also serve as a preliminary indication of the strength of the newest bloc of voters, those between the ages of 18 and 21. Most voters in that category are expected to support Thacher Longstreth, and this election provides an early test of the impact of that consititutional amendment on practical politics.

The effect on the Republican party is bound to be significant. A Republican victory could signal new efforts by the party to regain urban strength, while a defeat might lead to the inference that such efforts would be futile. The Republican attitude toward black voters in general is also sure to be affected. If a direct, concerted appeal fails to achieve substantial results, the party might regard similar efforts in the future as futile. Major shifts of black voters to the Republican party, on the other hand, would presumably affect Republican strategy in other urban areas as well.

A Longstreth victory would also serve to improve the fortunes of the Republican left-wing.John Lindsay's defection cost the party its most prominent ultra-liberal, and an upset victory by Longstreth would have to restore some of the wing's power within the party.

This election may also have a direct effect on the 1972 Democratic presidential nomination. The Pennsylvania Democratic "old guard," who supported Frank Rizzo, will probably remain in control of the large Pennsylvania delegation to the Democratic convention as a result.

Community Forum Planned

A group of metropolitan area law students announced their plans last night for a "community law forum." The proposal would provide for free-exchange discussions between D.C. area graduate students and local groups and organizations. Forum organizers declared their purpose would be to openly explore what citizens want, need and expect of law. Included, a spokesman added, would be considerations of current legal trends.

"We are very much concerned over the trends evident in the law bearing upon civil liberties, civil rights, consumer and environmental protection, welfare rights, antitrust enforcement and in related areas. We are clearly wary," the spokesman continued, "of the implications of the law-and-order 'solutions' to pressing societal problems – implications for the practice of law, the rights of the accused, for freedom of expression, freedom of information and for the advancement of disadvantaged minorities.

Questioned on the expected structure of the discussions, the spokesman explained that groups of three or four students from different graduate disciplines would meet with twenty to thirty members of service, religious and other community groups on a one-shot basis weekday evening and weekend afternoons. Plans call for the groups to be backed up with "cogent and stimulating" printed filmed, and recorded materials. In addition, forum members would be provided with periodic educational update sessions.

The spokesman said "[w]e are basing our tentative discussion format on the successful style adopted by Johns Hopkins students for race relations rap sessions in Baltimore city and suburban communities."

"I observed a Hopkins group," one law student explained, "and confirmed my gut feeling that, given a suitable outlet, so-called 'apathetic' community people would open up and voice their positions on issues of great public concern, and would do so eloquently. They did. The students didn't succumb to the temptation to talk down to their audiences.

Forum spokesmen indicated that graduate students willing to run at least one session every month are now being sought to work out forum details and collect suitable background resources and resource people prior to the start of community discussion scheduling. There are no restrictions on graduate disciplines.

Prospective participants should call 544-4627.

Baseball Antitrust Controversy Created by Senators' Move

by Eric Lamb

In the wake of Bob Short's decision, with the approval of the American league, to move The Senators from Washington to Texas, professional baseball's antitrust exemption is facing new criticism. The impact which the removal of professional baseball's antitrust exemption would have on the transfer of teams from one city to another is presently being considered by many interested in the baseball community.

History of the Exemption

Congress passed The Sherman Antitrust Act in 1890. Section One of the act declares illegal restraints of trade or commerce among the several states. Section Two of the act declares illegal monopolization of any part of the trade or commerce among the several states.

In Federal Baseball Club v. National League, 259 U.S. 200 (1922), The Supreme Court unanimously held that professional baseball is not interstate commerce, and therefore is not subject to The Sherman Act. Doubts about the vitality of The Federal Baseball Case were raised when subsequent Supreme Court decisions broadened the concept of interstate commerce.

Nevertheless, when The Supreme Court reconsidered the matter in Toolson v. New York it ruled that "if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation." The Toolson decision can be explained as an application of the doctrine of stare decisis by a court reluctant to upset the internal mechanism of baseball, which had been allowed for so many years to develop free from the restrictions of the antitrust laws.

Paradoxically, the court has declined to extend the exemption to other professional sports. Radovich v. National Football League, 352 U.S. 445 (1957). Reacting to this inconsistency, some Congressmen have proposed to abolish baseball's immunity, while other Congressmen have proposed to extend the immunity to all professional sports. With one narrow exception, none of these proposals has succeeded.

Interest in the matter has been renewed, since The American League permitted Bob Short to move his Washington baseball franchise to Texas. In both Houses of Congress bills have been proposed to bring the business of baseball under the antitrust laws. Meanwhile, The Supreme Court has surprised by agreeing to hear a case which will necessitate deciding if The Federal Baseball — Toolson principle is still valid.

To be sure, legislative or judicial abrogation of the exemption would profoundly effect organized baseball. But what impact would it have on the movement of franchises?

Procedures for Moving

A discussion of the impact of The Sherman Act on the movement of franchises must proceed from an understanding of the by-laws of baseball The Major League Rules, The American League Constitution, and The National League Constitution. For each member Team has agreed to the constitution of its own league as well as The Major League Rules.

Hence, when a move is proposed, representatives of each team in the concerned league convene at a special meeting called by their President. After discussion, the owner wishing to move his team raises a motion that the league consent to his team moving to a particular city. If three-fourths of the teams vote in the affirmative, the owner is free to move or not move to the particular city. If less than three-fourths vote in the affirmative, the owner is prohibited from moving to the particular city.

The Abandoned City

A city abandoned by baseball as a result of the above procedure has two means of regaining a franchise in the existing major Leagues. One means available is to acquire the team of another city. This depends on the same prodecure that produced abandonment in the first place. The second means is to acquire a team made available by the expansion of either league. But expansion of either league requires the approval of three-fourths of its members.

It has been suggested that removing baseball's antitrust exemption would make it possible to enjoin a major league from abandoning a city on the ground that the league's conduct in approving the abandonment while refusing to make available a replacement by expansion or otherwise constitutes a group boycott prohibited by Section One of The Sherman Act. See State of Wisconsin v. Milwaukee Braves, Inc., et al. 31 Wis. 2d. 699, 144 S.W. 2d 1, cert. denied, 385 U.S. 990 (1966). A group boycott is an agreement by two or more persons not to do business with other individuals, or to do business with them only on specified terms. Such agreements are generally held violative of The Sherman Act.

However, the group boycott doctrine has been held to have limited application to professional sports not exempt from The Sherman Act. In Deesen v. Professional Golfers Association of America, 358 F. 2d. 165 (1966), Herbert C. Deesen sought to enjoin The P.G. A. from refusing to permit him to compete in their tournaments. The Court rejected Deesen's challenge to a P.G.A. regulation on that participation in their tournaments is limited to those who convince the P.G. A. tournament and executive committees that they have "the ability to. . .finish in the money in tournaments. . .and the financial responsibility to undertake the gold tour".

The Court stated that "The P.G.A. is entitled to adopt reasonable measures for holding the tournaments to a manageable number." Similiarly, in United States v. National Football League, 116 F. Supp 319 (E.D. Pa. 1953), the Court upheld a National Football League restriction on the telecasting of outside games into any territory where a home team was playing, on the ground that without such a rule the weaker teams could not survive, and that eventually the whole league would fail.

Abandonment of a city by baseball is probably within the amit of the Deesen-National Football League rulings. Baseball, like other professional sports, presents a unique form of economic organization whose members are economically interdependent. If a team could not move from a city incapable of adequately supporting it, it could not afford to remunerate its ballplayers. The deterioration of the quality of play likely to result would adversely effect the other teams in the league. Further, the success of The American Football league and The American Basketball Association demonstrates that the creation of new leagues is a viable alternative means of entry into professional sports.

Though teams sometimes abandon cities which do adequately support them, arguments that baseball teams are somehow municipal enterprises or public utilities, which must continue to provide service as long as adequately supported, advance a claim to aesthetic interests, and as The Supreme Court suggested in Eastern Railroad Presidents v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), such interests are beyond the scope of antitrust protection.

The Spurned City

The antitrust rights of a city abandoned by baseball must be sharply distinguished from the antitrust rights of a city spurned by baseball when an owner desiring to move it fails to obtain the approval of his league. That the antitrust laws express a national faith that competition is the most appropriate regulator of economic activity implies that they will be construed to protect competition amongst cities to attract baseball teams. The argument that the possibility of a team moving into a city incapable of supporting it justifies a procedure for controlling moves is not persuasive, since the economic self-interest of the moving team provides sufficient protection. Thus abolishing baseball's antitrust exemption may produce a result opposite to the one some hope for i.e. the courts may invoke the antitrust laws and the group boycott doctrine to protect spurned cities rather than abandoned cities.

Moves Enhanced

In any event, antitrust applicability is likely to enhance movement of baseball teams by making it possible to enjoin the major leagues from enforcing their territorial restrictions. Under the constitutions of the respective leagues, a team may not move to an area near another team in its league, unless the consent of that team is obtained.

Further, a team of one league may not enter a city with a population less than 2, 4000,000 in which the other major league has a team, unless three-fourths of the teams in the other league consent. Major League Rules 1 (c) (1971). It can be argued that as a result of a move into a city capable of supporting only one team, both the incumbent team and the moving team might be sufficiently weakened by the competition to weaken the entire league. But the favorite admonition of those supporting territorial restrictions in the past has been that if the restrictions were destroyed, ruinous competition would be inevitable.

Wrong Forecast

In fact, the results forecast have never occurred. The economic self-interest of the moving team would seem sufficient to avoid burdening an area with more teams than it can support.

Editorial

Clinical Incentive

The article contained in the past ADVOCATE discussing clinical legal education at the National Law Center initiated a considerable amount of controversy within the Law School community.

Two main issues were raised in the article. The first said that GW did not have a "full-time" clinical law professor and the second issue discussed GW's incentive towards establishing clinical programs as an integral part of the curriculum structure.

THE ADVOCATE must give the administration a qualified apology for saying that GW does not have a full-time clinical law professor. Willie Leftwich is presently working in Bacon Hall to establish clinical programs through the Community Legal Clinic. However, Leftwich's presence must be qualified by two factors. First he is not paid from the Law School budget. The Community Legal Clinic operates, as Dean Nash says in this issue, through a grant from the Mellon Foundation, which, THE ADVOCATE has learned, was solicited not from the administration or the faculty as a body, but from a few individual professors. The past article emphasized that GW, as a legal institution, has not given a respectable amount of its own resources or energy to developing a clinical law program and CLC presents no exception to this analysis.

Secondly, there are five students under Leftwich's present direction. What other full-time professor at this school teaches five students a semester? Of course he needs time to develop worthwhile programs, but the administration and faculty knew over a year ago that they were severing relations with the Urban Law Institute and a more undergraduate law student oriented suubstitute should be found. It will be somewhat difficult to categorize Professor Leftwich as a full-time faculty member until at least as many students are in his program as are in the average classroom.

Who is to give incentive to students to participate in clinical programs? Dean Nash argues that the administration and faculty have given incentive. THE ADVOCATE still maintains that they have not. Professor Rothschild's Consumer Protection course is funded by the Food and Drug Administration, the Mellon Foundation and the Department of Health, Education and Welfare. THE ADVOCATE does not consider "incentive" to be allowing Professor Rothschild extra xeroxing privleges and secretary manpower. Rothschild receives his salary and office space because of his classroom teaching duties.

Likewise, John Banzhaf is paid for the traditional curriculum courses he teaches. His assistant and xeroxing are paid by ASH money. Two years ago, the Banzhaf group, SOUP, did receive approximately $500 from the administration, but this year his groups have been forced to pay for expenses with individual students' money.

THE ADVOCATE does wish to apologize for printing misleading information concerning Professor Reitz's environmental law programs. Reitz did not solicit funds for the program, but was hired to upon a Ford Foundation grant to the law school specifically designated for both a classroom and a clinical environmental program.

However, THE ADVOCATE believes that the administration and faculty have difficulty in distinguishing between actively advocating clinical programs and merely not hindering their implementation when a professor or student attempts to establish a program with his own energy and resources. Advocating clinical education consists of structuring a multitude of such programs as a major part of the student's curriculum.

At the present time, clinical education is not a part of the school' curriculum structure, but is an extra-curricular activity where the student might be able to receive a minute percentage of the credits he needs in order to graduate. This is true under any definition of "clinical law", whether it be community organization, individual case work, or field research.

This lack of direction and incentive places too great a burden on the student. For the majority of students a "will not hinder" administrative and faculty attitude maintains a status quo in legal education.

Most students, no matter how bright, come to law school without any knowledge of the legal community and its present or potential role in society. They look to their professors for guidance, and if that guidance consists of traditional legal education the student will, most likely, become a traditional lawyer. Allowing the student a few tangents will not alter this.

THE ADVOCATE's position is not one of preventing a student from becoming a traditional lawyer. This newspaper only asks that the school realize that traditional legal thinking has a strong head start, and to allow law students the opportunity to equally weigh all the roles a lawyer might play, it is necessary to give them official incentive to become exposed to all areas, including those which cannot be classroom taught.

THE ADVOCATE asks the administration and faculty of this law school to organize official hearings whereby all who may wish to participate, may voice their ideas on legal education. THE ADVOCATE hopes that the free discussion forums will be initiated as soon as the faculty and administration, along with the SBA appointed student representatives, can meet and discuss the details.

ADVOCATE

Harlan Brewer 7 — 676-7325

Editor-in-Chief
Gene Mechanic

News Editor
Kathy Mazziferri

Features Editor
Harold Gordon

Copy Editor
Linda Dorian

Photogrlaphy Editors
Cathy Waelder
Richard Burt

Business Manager
David Ontell

Letters to the Editor

The Attica Rebellion

EDITOR'S NOTE: The "editorial comment" referred to in the letter below was not an ADVOCATE editorial. Because of a production error Harold Gordon did not receive a byline.

Dear Editor

Your editorial comment in the last issue, concerning the causes and reprecussions of Attica disturbed me greatly. It reflected a gross lack of perception of what Attica was all about. The protagonists at Attica expressed a disalienation and disaffection with their predicament that transcended anything that mere prison reform could rectify. This was made glaringly evident by one of their major demands; that they be transported to a non-imperialist Third World country. Their lack of faith in this system generally was highlighted by a statement drawn up by the inmates in the week following the massacre...

"We are not criminals, nor are we enemies of the people. Government and public institutions are established to serve and promote the needs and welfare of the people. Why must they subjugate and exploit us through the labor process and oppress the people of America through increasing taxes, paying for emergency health care, transportation, housing, food, etc. when everything is 'pay on the pot' or credit with interest? Looking at this objectively this capitalist system creates opposing tendencies among ourselves; examples: racial, religious and class biases. Our job as concerned people is to expose the system, which is really run by approximately 400 families (Duponts, Rockefellers, Fords, Mellons, etc.) and show that these people, a minority, are only a breed infected by money and have no concern whatever for the people in general..."

"Is it not so that our Declaration of Independence provides that when a government oppresses the people, they have a right to aboslish it and create a new government? And we at 'Attica' and all revolutionaries across the nation are exercising that right.

"In conclusion; those brothers whose lives were taken by Rockefeller and his agents did not die in vain. Why. Because the uprising in Attica did not start here nor will it end here."

The brothers at Attica and like institutions are saying that this system is incapable of dispensing justice and accordingly they have no desire to be "rehabilitated" and placed back into it to perform. The prisons at Attica and throughout this land are symptons of the general decadence of this country's degenerate politico-economic system. It is not fortuitous that the overwhelming majority of the inmates in prison today are from the poor, disenfranchised class of society.

Is it any wonder then that those persons most active in the struggle within prisons today are from Black and other "minortiy" groups. As the brothers at Attica came to learn, racism plays an integral role in perpetuating the class system in this country. To disregard the socio-political factors that profoundly influenced the fate of inmates of prisons today and fail to characterize their status as a political one is fatuous. Most of the inmates of prisons roday are there for very political reasons. The economic-political system has relegated them to an existence where all too often they have to resort to some "crime against property" to survive.

Your editorial was a very biased assault on Kuntsler "and other like minded individuals" of the left of the political spectrum. The thing that made this most objectionable was the fact that the denounciation of Kuntsler was preceded by a proposition that we should refrain from seeking scapegoats and engaging in banal rhetoric. Kuntsler is no shining prince but he is by no means the demogogue that you depicted him as being.

Ultimately however, the effect that Attica will have on this country's course will be reflected by what is doing about ameliorating our society's ills, not on what is said about them. This point was made most eloquently recently by Afeni Shakur, a defendant in the New York Panther 21 trial.

"On the lips of almost every person in America is that strange word...Attica. Few, however, are willing to admit that had the American public voiced its concern when they were asked to by those inmates (weeks before), we would not have the blood of 40 human beings on our hands. We forget that some of those same people asked for these same basic demands a year earlier at the Tombs in Queen. They were duped at that time by empty promises."

James Aaron

Help Wanted: Justice, *Permanent job, good salary, with old established American firm*

by David Kaufman

Immediate openings for top court seat—unusual opportunity for employment with established American institution.

Interesting and challenging position—learn law while you make law.

Good salary and employee benefits—permanent job for right man!

Free parking

Dependable person, neat appearance—must be conservative in dress and outlook

No judicial experience necessary—will train

Fringe benefits—The honor of representing Richard Nixon on the court; the chance to help the peace forces (i.e. the police) win the war against the criminal forces in America

Record will be reviewed by:

(1) The F.B.I.—You should not be a member of any organization more radical than the A.M.A.

(2) The American Bar Association—No problem here, as nominees always given qualified rating in past

(3) The United States Senate—Though weak on civil rights, you should have no conspicuous record opposing blacks (such as membership in Ku Klux Klan), as this will jeopardize Senate confirmation. See Clement Haynsworth, Harold Carswell for pitfalls to avoid.

Men and Women may apply—The United States Government is an Equal Opportunity Employer

(1) Men—Must be a representative of the traditional South, i.e. soft on integration.

(2) Women—Must be as tough as any man on law and order. Must be able to endure wisecracks by eight dirty old men during obscenity case film screenings.

Legal Philosophy—Must be a strict constructionist and firm believer in judicial restraint, i.e. when an Executive action allegedly violates the Bill of Rights you'll give the Executive action the benefit of the doubt. Must also believe strongly in the separation of powers, i.e. that the Judicial branch is decidedly subordinate to the Execuitve and Legislative branches. Incidentally, you should feel that Earl Warren should have been impeached for violating these tenets in his unscrupulous efforts to impose a system of checks and balances.

Political Philosophy—Somewhat to the right of Genghis Khan.

Your co-workers:

(1) Warren Burger—The Chief Justice. This means that he's in charge of administrative matters of the court, such as fixing the lighting and rearranging the furniture. Looks like a Supreme Court Justice—just like Warren Harding looked like a President. The Court spokesman to the youth of America.

(2) Harry Blackman—The Mutt to Burger's Jeff. They rarely decide a case differently. Says Burger, "I'm just wild about Harry, and Harry's wild about me."

(3) William O. Douglas—The Court radicalib. Only Justice whose books appear in head shops. Other Justices jealous of his young wife, who really gives his pacemaker a workout.

(4) Potter Stewart—Anyone with a name like that can't be all bad.

(5) Thurgood Marshall—The token black on the Court. If he retires the President is thinking of naming Sammy Davis, Jr., so he can knock off the black seat and the Jewish seat in one shot.

(6) Byron White—Don't mess with "Whizzer," a former football All-American.

(7) William Brennan—The Unknown Justice.

Apply now!—Such openings are unpredictable, and often are widely spaced. Also,—just in case something bad happens in November 1972, the next appointer of Justices may not be at all impressed by your qualifications.

D.C. Small Claims Court Uses "Treadmill Justice"

by Ned Kiley

The American court system is revered by the average layman. However, if he actually experiences the workings of any small claims court, such reverence may change to astonishment.

Criticized by some as being "your friendly neighborhood collection agency," the Superior Court of the District of Columbia, Small Claims and Conciliation, is above all, unique. In no other court is justice meted out in quite the same manner. The substantive and procedural rules are essentially the same as in Civil Division. It is their application which sets Small Claims apart.

On March 14, 1971 suit was filed in Small Claims and Conciliation Branch in the amount of $137 claimmed due and owing on a contract (Case no. SC3933—71; Clark v. Biermann). The case involved an interior painting contract performed by plaintiff on defendant's home. The defendant answered that her refusal to pay the sum in question was due to plaintiff's poor workmanship. All attempt at an out of court settlement having failed, trial was set for March 30, 1971.

Small Claims requires a very brief statement of claim, unencumbered by legalisms. The complaint form provided only allows enough room for the barest details. The answer must also be brief, but because there is no form, it is usually somewhat longer than the complaint. This procedure conforms to the policy of handling Small Claims suits with a a minimum of legal rigamarol. While the basic rules of substance and procedure of any federal or state court apply, they can be bent, shaped, and even ignored by the judge "if the interests of justice require." A case in point is the appearance of the parties at trial. Should the defendant fail to appear a default judgement will be entered. If the plaintiff doesn't show the judge can either dismiss the suit, enter a nonsuit, proceed to trial on the merits, or continue the case.

At trial defendant filed a counter-claim in the amount of $450—$208 for mental suffering and embarassment caused by the alleged poor workmanship (defendant was appearing without counsel), and the balance of $242.76 for repairing the job. At the plaintiff's motion, and over defendant's objection, the case was continued until June 9.

As was previously mentioned, the basic rules of procedure apply and the counter-claim was properly made. Though the defendant's claim did not exceed the jurisdictional amount ($750—somewhat higher than the national average), the case would have remained in Small Claims as long as the total amount did not take it out of the jurisdiction of the Civil Division. If a jury trial had been demanded, the case would have been assigned to the regular branch of the Superior Court.

The continuance was granted at the judge's discretion. They are freely given and the plaintiff can usually choose arbitrarily when the trial will be rescheduled. One reason for the long continuance in this case was to avoid an unfavorable judge. Judge Molloy was sitting in March with Judge Burka due to sit in April.

After a final attempt at conciliation the case was tried before Judge Orman W. Ketcham. Plaintiff asked that an attorney be appointed by the court to represent him. Steven Sommerstein, a member of the D.C. Students-In-Court Program was named plaintiff's counsel by Judge Ketcham. Mrs. Biermann, the defendant, was then asked if she wished an attorney to be present. She declined and appeared pro se.

The attempts at conciliation mentioned point out a significant role played by Small Claims. By statute, the judges are bound to make earnest efforts at settling disputes before trial. As many of the litigants appear without benefit of councel, the judges must act almost as mediators between the parties. While this procedure seems to act better in theory than in practice, is is usually adhered to.

The assignment of judges to Small Claims is generally on a thirty day rotation basis. However, the selection of judges is entirely within the discretion of the Chief Judge. A number of Superior Court judges have never sat on Small Claims.

Both the Neighborhood Legal Services and the D.C. Students-In-Court Program provide attorneys for litigants in Small Claims. Technically, these attorneys and students are only supposed to represent "indigent" parties, indigent being defined by the offices themselves. These qualifications for representation are bent at times, as one N.L.S. assistant told me according to the needs of each situation. For instance, many people on public assistance receive over the prescribed income, but are unable to afford a lawyer. These attorneys need not be appointed by the court. The offices can be contacted prior to trial date and arrangements for representation made. Needless to say, both groups are swamped with applications.

Trial proceeded with plaintiff presenting his case. Witnesses were sworn and examined, and cross-examined by the defendant. Judge Ketcham asked questions of the witnesses as well as the attorney and defendant. The only exhibit presented was the contract.

Following the cross-examination of plaintiff's last witness, defendant presented her case. Rather than give direct testimony she read from a statement prepared by herself, her husband, co-defendant but not present, and an attorney, also not present. The admission of the statement was objected to on the grounds that it was prepared by persons not in court and unavailable for cross-examination—objection sustained!

Defendant then offered various wtitten statements by professional painters as to the quality of workmanship. Their admissability was objected to on the same grounds as the prepared statement and also on grounds of irrelevancy since, as a student and part-time painter, plaintiff was not held to the same standard of care as a professional painter. Again, the objection was sustained. Photographs taken by Mr. Biermann purporting to show the defective workmanship were offered, and admitted over objection, Judge Ketcham stating that, "This appears to be the only evidence we're going to get." Mrs. Biermann defended against plaintiff's claim and pressed her own counter-claim at the same time.

Following trial and deliberation Judge Ketcham delivered his verdict: Judgement for plaintiff in the amount of $100 with interest; counter-claim denied to the defendant.

Judge Ketcham adhered to the rules of evidence more closely than many of his colleagues. However, as seen by the admittance of photographs taken by an absent defendant under unknown and unknowable conditions, the discretion of the trial judge in evidentiary matters is wide.

Procedurally, the counter-claim of defendant received no separate treatment. Except for the excluded documents, the counter-claim was ignored. This was perhaps to be expected when a counter-claim on a contract suit alleges mental suffering from a rotten paint job.

June 14, 1971 defendant filed an application for allowance of appeal to the District of Columbia Court of Appeals. Grounds for the appeal were improper conduct by the trial judge and errors of law in regards to the exclusion of her proffered evidence. On June 25, 1971 the Court of Appeals denied the application. Thereafter, upon defendant's apparent refusal to pay, plaintiff obtained a garnishment decree and attached dependant's wages. The judgment was paid in full within a week and the garnishment was withdrawn.

While an appeal from Small Claims was not precluded, because of the nature and number of the proceedings, and the judge's wide discretion in conducting them, the result is usually as it was in Clar V. Biermann.

The rules of Small Claims Court also provide for such remedies as the garnishment procedure used here. All the normal remedies of judgment creditors are available in executing a final judgment. There is one important difference, however. At the request of the party against whom the judgment is to be entered, the judge will examine his financial status and, again at his discretion, may enter a stay execution and order installment payments fitted to the party's income. Such stay will of course be vacated upon he party's failure to pay an installment without just excuse.

Anywhere from two dozen to forty cases are handled by Small Claims in a given day. Most of these are dispatched according to the "treadmill justice" theory we've heard so much about. Few (perhaps three) receive the treatment granted the Clark case. These statistics of course vary depending on the presiding judge. Some feel, unlike Judge Ketchem, that the most effective treatment of Small Claims cases is the one which is the least time consuming.

Menick Miscellaneous

by Jeff Menick

Since many of the people around the NLC spend more time on non-law school activites than on our classes and casebooks, this column will be devoted to commentary on how to relieve the drudgery of law school. We will devote a number of columns to college basketball, beginning with a preview of area college teams in the next issue. For now, let me just advise you that all GW home games are played at Ft. Myer and are free to all students, but for the GW—Maryland game on Dec. 4, tickets will be exchanged at the athletic office, 2027 H St. N.W., on Nov. 15. All you need to do is present your I.D. and you will be given a ticket in exchange.

Speaking of sports, since the Redskins have the only professional show in town a lot of people are getting very excited about their prospects for a winning season. Although I am a sports fan, I think is is symptomatic that while more media space is given to the football team and its problems than to the problem of the community in which it plays. I'd like to know whether a Super Bowl victory will help get the metro built, or the riot-torn corridors rebuilt, or will help effect social reforms?

Moving on to sweeter topics, for those of you ice-cream freaks who are new to the D.C. area and did not see the recent *Potomac* article on the subject, let me advise you that the best ice cream in town can be found at the University Pastry Shop on Wisconsin Ave. at Macomb St., N.W. They only have cones, cups and take home, but the ice-cream is out of this world. For sodas and sundaes, Gifford's, at Bailey's Crossroads, Bethesda and Silver Spring, is the greatest place south of Cabot's in Newton, Mass. But they close at 11 p.m. There are two good soft ice-cream stands; the Polar Bear on Georgia Ave. near Piney Branch Rd., N.W., and The Reindeer on Colesville Rd., near East-West Hwy., in Silver Spring.

Now that all of you are thinking kindly about your stomachs, I want to recommend a restaurant and a meal that no one should leave Washington without trying at least once. The Empress Restaurant at 1018 Vermont Ave., N.W. is one of the finest Chinese restaurants in the world. Every dish is prepared to perfection and, as with most Chinese restaurants, the prices are very reasonable.

Those of you looking for an extraspecial taste treat should try the nine course Mandarin Dinner. You must have at least a party of four and make reservations at least 24 hours in advance, but the $10 per person is well worth it. There is free parking and the price includes tax, tip and two glasses of wine. The memorable meal starts with a cold platter of Chinese appetizers including thousand year eggs, abalone, pickled jellyfish, and other delicacies.

You are then served chicken and asparagus soup, which is followed by Peking duck, the main attraction of the banquet. For those who have never had this fantastic dish., it is carved at table side by the chef. The extremely crisp skin is separated from the meat and is served with a marvelous sauce and fresh spring onions. Then all the components are folded into a thin, crepe-like pancake. The duck is followed by four more dishes; a mandarin-style sweet and sour pork, chicken velvet, a marvelously seasoned shrimp dish and a beef and mushroom creation. Then meat pies and lichee fruit is brought to the table and you leave gasping for air, having loved every morsel.

Don't forget to take advantage of your student status in going to the theater this year. Many of the area theaters are giving very good deals to students. The Kennedy Center is reserving a number of seats for almost all performances for students at up to 50% off. You must go to the box office and present your I.D. card and you are only allowed one ticket per I.D., so borrow a friend's if you want to take a date or a wife. At the Washington Theater Club you can buy two tickets with one I.D.for $2.00 apiece, but only 15 minutes before show times. Ford's Theater has a $3.00 student price for matinee performances. Arena Stage has perhaps the best deal going. Even on a sold-out performance, students will be admitted for $2.60 to standing room, and if seats are available, the cost remains the same. Some movie theaters also give students a discount. Always ask at the box office.

1971-1972 SBA Budget

Advocate, $4500; Black Law Students Assn.,$400; Environmental Law Society, $405; International Law Society, $250; Journal of International Law and Economics, $0 (receives non-SBA funds); Law Wives, $50; Legal Aid Bureau, $1,035; LSCRRC, $300; Patent Law Assn., $100; Student Tax Law Assn., $100; Van Vleck Appellate Care Club, $600; Women's Rights Committee, $185. Total: $7,878.

Woman Convicted for Abortion

by Linda Dorian

Shirley Ann Wheeler, a 23 year old former Daytona Beach cashier, was convicted July 13 under a 103 year old Florida abortion statute allowing for a maximum penalty of 20 years imprisonment, the same as for manslaughter. Ms. Wheeler was sentenced by Judge Blount in DeLand, Florida, on October 15, and was given a two year probated sentence on the unique condition that she marry the man with whom she had been living, or return to North Carolina to live with her family. She was given one week in which to reach her decision and to complete the change in her living arrangements. Ms. Wheeler, who states that she does not believe in marriage, has returned to Charlotte, North Carolina, and is presently living with her brother and his family.

Shirley Wheeler is believed to be the first woman in Florida to be convicted of having an abortion. A spokesman for the Florida attorney general's office said he did not know of any previous such prosecution or conviction.

Under the Florida law, passed in 1868, an abortion is a felony unless it is "necessary to protect the life and health of the mother" or it is recommended by two doctors. Shirley Wheeler ran afoul of the Florida law when pregnant and unable to secure a legal abortion, she procured an illegal abortion in Jacksonville, Florida, for $150 about a year and a half ago. After the abortion she began hemmorhaging and returned to her own doctor, who hospitalized her. Several days after her release from the hospital, a detective arrived at her house, charged her with "abortion," and took her to jail. After she was in a jail cell for about an hour, she said the detective took her into a room and showed her colored pictures of a fetus. He said, "you have to look at this, that's your baby. Why did you do it?"

At her two-day trial, Shirley Wheeler said that a doctor in her home town of Morganton, N.C., had recommended the abortion since she had suffered from rheumatic fever when she was 19 and her mother died from it. Ms. Wheeler also suffered from severe toxemia during a pregnancy when she was 18, and believed that this possible complication coupled with the damaging effects of rheumatic fever made it particularly risky to undergo another pregnancy.

Ms. Wheeler's public defender argued in her defense that the law was too vague. The Florida Supreme Court recently told the state legislature, which had tabled a more liberal abortion law last session, to reexamine the 103 year old statute because it was too vague to be sustained.

Cynical feminists might be grateful for Shirley Wheeler's plight; a popular martyr is helpful to any cause. Numerous persons who would not identify themselves as sympathizers with the "women's liberation" movement have been outraged by this case. Shirley Wheeler's spirits have been bolstered by letters and calls of support from across the country. On October 21st rallies of support were held in Boston, Minneapolis, Philadelphia, Austin, and New York. Offer of bail, if needed, came from such diverse supporters as the United Methodist Church and Playboy Magazine.

The Shirley Wheeler Case raises interesting and perplexing questions for anyone interested in fundamental civil liberties. Does the right of privacy recognized in Griswold extend to the regulation of one's own body? Are abortion laws, primarily based on religious notions of morality but enforced by state law, in violation of the 1st Amendment separation of church and state requirement?

EPA, from p.1

EPA Regionalization Fight Preventing Enforcement

The bulk of EPA's activity is actually conducted in the 10 regional offices in New York, Boston, Philadelphia, Chicago, Denver, Atlanta, Dallas, Kansas City, San Francisco, and Seattle. This is a result of President Nixon's desire to decentralize governmental activity, as well as a recognition that environmental programs are primarily local and regional in scope.

Each region has its own Administrator who "develops, prepares, and implements an approved regional program for comprehensive and integrated environmental protection activities," according to a recent EPA directive. The regional director reports directly to the Administrator.

This emphasis on regionalization, while attractive in a strategy sense, has not been implemented effectively. Indeed, it has taken Ruckelshaus the better of a year to select nine of the 10 regional administrators (the other position is still vacant). Furthermore, there appears to be a power struggle developing between EPA in Washington and its Regional Offices. The most obvious manifestation of this is a critical absence of the co-ordinated effort necessary to effectively implement standards and policy which are developed in Washington and transmitted to the regions.

An example of how EPA attempts to formulate and implement programs that improve the environment is its air quality program, developed in response to the 1963 Clean Air Act, the 1967 Air Quality Act, and subsequent amendments which have provided the Agency with a statutory base. In fact, according to GW Environmental Law Professor Arnold Reitze, the basic change after the 1970 amendments "is that the Administrator has almost unlimited discretion in telling the states and regions how to do the job."

The 1967 Act provided the framework for an intergovernmental system for control and prevention of air pollution through the establishment of a system of air quality regions. The Department of Health, Education and Welfare had been held responsible for reporting on new control techniques as well as for issuing implementation plans (functions now of EPA). The state governments were expected to respond by establishing air quality standards for the regions and then implementing those standards. Enforcing and monitoring these standards to insure progress towards a measure of air quality was to be handled by the states, with Federal assistance.

Unfortunately, this plan of attack proved to be ineffectual, as recorded levels of air contaminants continued to rise. Much of the problem, according to Professor Reitze, was that "the state government was given substantial responsibility under the Federal act. The state government's general disinterest in the subject and their lack of concern for urban problems make this level of government the natural choice for having primary responsibility for the air pollution abatement program."

The 1970 Clean Air amendments placed primary responsibility for facilitating air quality improvement in EPA. Under these amendments the Administrator is allowed to designate air quality regions in addition to the 32 regions established under the 1967 Act. The Administrator is also empowered to establish uniform national primary and secondary air standards, with the states being permitted to set more stringent, but not weaker, standards.

Implementation plans must be developed by states which would allow primary standards to be achieved within three years, while secondary standards must be achieved within a "reasonable time." The EPA adminstrator can practically take over a state program if he considers it inadequate. EPA is given the added responsibility of setting emission standards for hazardous air pollutants, including toxic materials such as beryllium.

Federal enforcement is provided for if an implementation plan is violated. Both the state and the violator are notified and after 30 days the Administrator may issue compliance orders or bring a civil action. If the violation appears to be a result of the state's failure to enforce existing standards, EPA may enforce the plan instead. In addition, citizens may bring civil suits against any person, including governmental units, guilty of violating emission standards, in Federal district courts.

Under the second half of the Clean Air amendments, the Administrator is instructed to enforce emission standards for automobiles which will take effect in 1975 and 1976. Included are standards which call for the elimination of up to 90% of the present levels of carbon monoxide, hydrocarbon and nitrous oxide emissions.

Inasmuch as the states are just now in the process of developing implementation plans to present to the Administrator, further time will be needed to evaluate the effectiveness of the EPA programs. However, EPA's effectiveness will certainly be limited by the weaknesses of its operative legislation, in areas other than air pollution, and by the failure of the Executie branch of government to strongly act against the business and industrial community.

Media Access Limited

by Alan Kassirer

If current developments are any indication, during the next few years the First Amendment's right of access to the media may be significantly broadened. While gaining recognition as a political issue only recently, citizen's access to the media has quietly increased over the past few years. One person who is instrumental in this movement is GW law professor Jerome A. Barron, who recently testified before Senator Sam Ervin's Committee on Constitutional Rights, which is presently holding hearings on freedom of the press.

Barron, a recognized expert in the field, said he was "flabbergasted at how little awareness of new [court] decisions was shown by the Committee and its witnesses," who in his view uncritically accept the media's position that the answer to broadcasting's problems lies in less government regulation. Barron points out that the only present avenue for minority and dissenting voices to be heard is the government's "fairness doctrine." The media, he contends, are advocating that they should be "unresponsive and unaccountable to all."

As evidence, Barron cites network opposition to an FCC ruling earlier this year requiring local stations to devote one hour of prime time weekly to local programming. The original purpose of the ruling was to allow community groups to air their views; but the failure of the FCC to set standards for the use of such time, says Barron, gave the networks an opportunity to "sabotage" the rule's operation by filling the time slot with re-runs. Barron believes that it is necessary "to develop mechanisms to decentralize the opinion process, to provide access for all our warring constituencies so that. . .their views are fairly placed before the national constituency at large."

An indication that Barron's views are beginning to win acceptance was seen last June when the Supreme Court, citing his major article on the subject (80 Harv.L.Rev. 1641 [1967]), suggested that "[i]f the States fear that private citizens will not be able to respond adequately to publicity involving them, the solution lies in the direction of ensuring their ability to respond, rather than in stifling public discussion of matters of public concern." (*Rosenbloom v. Metromedia, Inc.* 403 U.S. 47, 91 S.Ct. 1821 [1971]).

While Barron wants to see his doctrine extended to the press as well, the current battle is over access to radio and TV, primarily because of the political importance of electronic media. In a case decided this August, for example, the U.S. Court of Appeals for the District ruled tht broadcasters were not allowed to discriminate against political advertising in favor of commercial advertising. (*Business Executives Move for Vietnam Peace v. FCC,* No. 24,492 (Aug. 3, 1971)). The discriminatory policy had been adopted by the networks, according to Barron, for the simple reason that "people don't buy soap when they're upset."

The anti-Vietnam group was joined in that suit by the Democratic National Committee (DNC), which on October 20 filed its own suit against the FCC in the hope of winning a ruling which would require "that an opportunity be afforded to respond to all television appearances by the President."

While Barron sees this suit as essentially an argument for access, an interview with DNC Press Secretary Joseph E. Mobbat made it clear that DNC was seeking a ruling "within the limits of the fairness doctrine" but applicable "only to the two major parties," which would mean that "regardless of candidacy, the opposition party has an automatic right to reply."

But while the DNC is gearing up for 1972, other advances are being made on the access front, the most recent being a successful suit filed by Friends of the Earth, ordering the FCC to review its ruling denying them equal time for commercials spotlighting automobile hazards. Friends had based their claim to such time on the ruling obtained by GW professor John Banzhaf III, which led to anti-cigarette ads.

According to the Oct. 18 edition of the Insurance Institute for Highway Safety's **STATUS REPORT**, a faborable ruling for the FCC could lead to ads pointing out such hazards as truck "underride" and the greater occupant damage vunerability in small cars and "muscle" cars.

The FCC is now accepting comments on "fairness" doctrine applicability to product advertising. Comments should be sent to Docket 19260, FCC, 1919 M St. N.W.

SFC, from p.1

Faculty Sent SFC Resolutions

on time.

The SFC resolutions now go before the full faculty. Under present administration policy, the faculty has veto power over SFC resolutions. If the faculty does veto a resolution, the Committee has no formal recourse procedures.

The resolution to protect students who are taking a course "pass-fail" was passed by a 6-1 vote, with Professors Glenn Weston and H.P. Green abstaining. SFC's other faculty members, Donald Rothschild and Associate Dean W. Wallace Kirkpatrick, were not present at the meeting. The resolution was passed in reply to the refusal of at least one Law Center professor to allow students to take his course "pass-fail". The professor was quoted as saying that he would "flunk anyone who took his course pass fail." At present, a computerized list is sent to all professors at the beginning of a semester notifying them of the students in their course, as well as which students are taking the course "pass-fail".

The decision to allow students to waive the 15 credits maximum per semester during their sixth semester was reached despite arguments that such a policy would be detrimental to night students. American Bar Association policy forbids law students who are working more than twenty hours a week from taking more than ten credits a semester. Despite this, the Committee decided 4-3, with both professors again abstaining, that even if all students cannot be helped, the resolution would aid most of them. Thus, if the faculty gives their consent to the resolution, a full-time student who fails a course during his fifth semester can take extra credits during his sixth semester in order to graduate with his class.

In other matters, the Committee discussed ways of enhancing student impact on the faculty tenure system and gave support to a campaign by student representative Howard Sribnick to establish alternatives to the present third year curriculum structure.

SFC Representative Howard Sribnick is seeking students who are willing to give a long-term commitment to a curriculum reform project. Those students interested should contact Mr. Sribnick at 2121 H Street, N.W.

Smith, from p. 1

Convict Prepares Appeal

rehabilitation of their convicts and apparently, as in the case of Smith, they have concluded that the condemned are beyond rehabilitation. Accordingly, Smith, like any other death row inmate,was denied nearly all visitors, any form of outdoor exercise, and access to religious services. In addition, the prison authorities prevented him from becoming a member of Mensa, the genius fraternity, although he had passed the requisite examinations, and even denied him a typewriter so that all 350 pages of his first book—the widely read *Brief Against Death*—had to be written out in longhand. Incredible as the conditions of his confinement may appear, the seeming blood lust of the State with regard to his case is by far more incredible.

A noted English essayist once observed that most of life's dramas may be viewed as either a farce or a tragedy—depending upon the whim of the spectators. Certainly the events which followed the success of Smith's latest appeal (his nineteenth since 1958) contain ample elements of both.

On May 14, 1971, Judge Gibbons of the U.S. District Court in Newark, under orders from the Supreme Court to review the case, first threw out Smith's confession and then ordered that he be given a new trial within sixty days or be freed.

The State of New Jersey promptly announced that it would appeal the decision but Smith, expecting to be shortly released on bail, found the prospect of freedom so intoxicating that he did not seem overly concerned as he jubilantly wrote his friends: "Take care. I may be visiting you any minute now." It was on June 9 that the real blow fell. A day earlier, in a triumphant courtroom appearance surpassing anything in legal fiction, Judge Gibbons ordered Smith set free on only $5,000 bond while his friend William Buckley, who had agreed to be personally responsible for his future court appearances, looked on with his attorneys and other supporters. Smith was to have been the guest on Buckley's television show that week but less than 24 hours later the State had obtained a reversal of the bail order and sent him back to the 8-by-8 cell that had been his home for fourteen years.

While the State's efforts to deny Smith a new trial were ultimately thwarted, first by the Third Circuit Court of Appeals and finally by the Supreme Court, its attitude is all but impossible to understand. Is the State that certain of its own infallibility that it is willing, even eager, to carry out a death sentence that is fourteen years old? Will it destroy living proof that rehabilitation can work? Does it wish the distinction of terminating the undeclared moratorium on captial punishment that has existed in this country since 1967?

The last execution in New Jersey was eight years ago. The death house at the State prison is now used as a storing room for surplus mattresses. Is it conceivable that even if Edgar Smith were to be suddenly possessed of a death wish and waive his appeal that the State could actually remove the mattresses, dust off the electric chair, and restore the death house to its original function? One wonders.

Happily, however, Edgar Smith need no longer speculate on the possibility. Since the confession which was wrung from him in 1957 has been thrown out as having been illegally obtained, there is hardly any doubt but that he will be acquitted at the conclusion of the new trial which will be held in a matter of weeks. There may be a slight delay, however, owing to one final piece of bombastic irony: the State of New Jersey, which seems to pride itself on the perfection of its system of justice, must somehow find a new prosecutor with which to try the case; the current prosecutor has been suspended by the Governor pending his investigation on criminal charges.

Meanwhile, Edgar Smith is busy. In addition to preparing his case he is currently writing a new book on prison reform. While conditions at Trenton State Prison have mysteriously improved since his first book was published, he has suggested in a recent article in Esquire magazine that there is still room for further improvement.

For example, although death row inmates are now permitted the use of the exercise yard for ninety minutes a day, they are allowed no recreational equipment—not even a rubber ball to toss around, they may not improvise their own games, and when several inmates had managed to cultivate a small flower bed of petunias a prison guard cut them down with a power mower. As Mr. Smith so quaintly puts it: "I think the rules were designed by Kafka."

Apartment Repair Needed?

by Dave Cooper

Question: My apartment needs a lot of repairs but my landlord refuses to make them. What can I do?

Answer: Assuming that you rent in the District you can take advantage of some of the most liberal landlord-tenant law to do a great deal. If your landlord will not repair defects that you have not caused, call the Bureau of Licensing and Inspections at 629-4635 and arrange for a Housing Code survey of your premises.

The Housing code sets out minimum standards of habitability and the defect that you want repaired probably constitutes a violation. The inspector will compile a list of violations and will forward a field notice to your landlord directing him to correct the defects. (You may have to request a copy.) Retaliatory evictions are not permitted in the District.

If the landlord complies with the order, your problem is solved. If not, and if the city does not bring criminal charges for noncompliance, your next move is to stop rent payments. This gives your landlord grounds to sue for possession, but existing code violations in the District are a defense to an action for possession whether or not the violations existed at the time of occupancy or occured during the term. Your landlord may be able to obtain a protective order requiring payment of your rent in the registry of the court as it falls due, but such orders are frowned upon especially where the cause comes up for trial promptly.

Should the court find substantial violations justifying nonpayment of rent your landlord cannot evict you and he is not entitled to receive rent until the defects are repaired.

SBA Gives Annual Report

Without active participation on the part of its members no organization can succeed. This was particularly true of the Student Bar Association during 1970-71. Its primary function was the allocation of $10,000 of student funds to independent student organizations.

SBA did pass a resolution recommending tenure be granted to two professors, but when tenure was later denied one of them, it contributed minimal support to either side of the controversy that ensued.

SBA did manage to maintain the Student Book Exchange for another year.

Further reflection on the other Student Bar programs would be pointless if points are to be awarded for goal achievement and student involvement.